



Overview of Proposed Revisions to Freshwater Wetland Rules

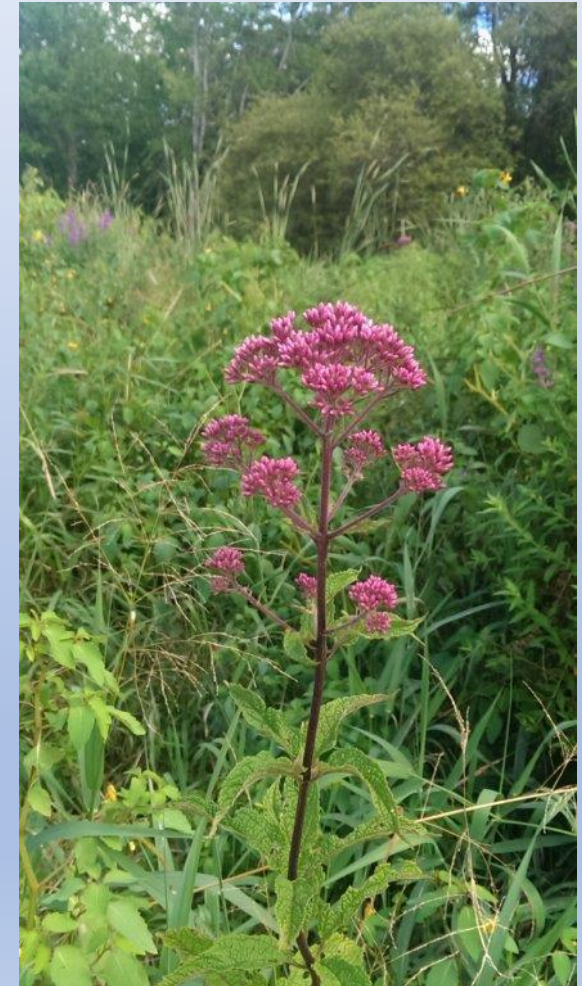
Public Workshop

November 23, 2020



Presentation Outline

- Summary of Legislative History
- Key provisions of Single Standards Bill
- Overview of Proposed Regulations
 - Definitions
 - Applicability
 - Standards and Variances
 - Permit Streamlining
- Municipal Coordination
- Next steps in Rulemaking Process



Rhode Island Freshwater Wetland Resources include:

Lakes and Ponds Rivers and Streams

Vernal Pools Vegetated Wetlands
(Swamps, marsh, bog etc.)



R. Enser



T. Kutcher

Functions and Values:

Flood Protection * Climate Resilience * Carbon Sequestration

Water Supply – preserving the quantity and quality of drinking water

Water Quality Protection * Fish and Wildlife Habitat and Biodiversity

Recreation and Aesthetics

Background

Regulatory Reform Act of 2013

- Established a **Legislative Task Force** to assess adequacy of freshwater wetland protection & recommend statutory and regulatory changes
- Diverse task force reviewed available science, met with experts and held lengthy discussions

Legislative Task Force Report – December 2014

- The 1971 Wetlands Act contains significant gaps and is not adequate to protect some wetlands.
- In general, setbacks standards for OWTS are sufficiently protective.
- Recommended statutory and regulatory changes



**Legislative
Task Force**

Final Report
December 31, 2014



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2015 Freshwater Wetlands Single Standard Bill

An Act to Streamline and Strengthen
Freshwater Wetlands Protection Statewide



Purpose – Implement Recommendations from the Legislative Task Force

Key provisions:

➤ Strengthens wetland protection administered at the State Level

- Expands jurisdictional area for state agencies
- Establishes statewide buffer standards – promoting flexibility to tailor protection taking into account existing land use and resource value
- Redefines and clarifies terminology
- Maintains existing definition of “Farmer” and associated permitting exemptions

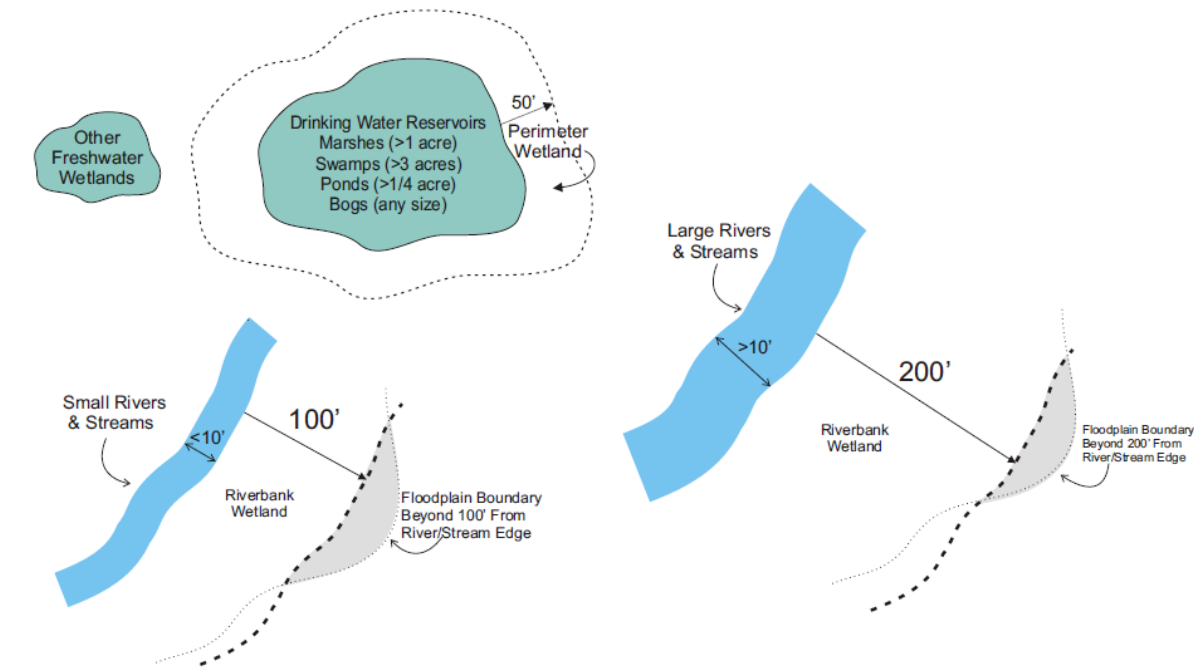
➤ Streamlines regulatory process by eliminating duplication of effort at the local level

- Establishes new requirements for state agencies to share information with municipalities
- Allows for municipal petition to increase a buffer standard (within limit of JA)
- Eliminates municipal veto provision

Key New & Revised Definitions (Rule 2.4)

- **Jurisdictional Area (JA)**– area to be regulated includes - freshwater wetlands, buffers, floodplains, areas subject to storm flowage, areas subject to flooding, and contiguous areas that extend outward:
 - 1) Two hundred feet (200') from the edge of a river or stream;
 - 2) Two hundred feet (200') from the edge of a drinking water supply reservoir; and
 - 3) One hundred feet (100') from the edge of all other freshwater wetlands (including ponds).
- **Freshwater Wetlands** – Now defined as the resource area only (i.e. bog, marsh, swamp, vernal pool, pond, river, etc.). Upland areas previously called perimeter and riverbank wetlands are now regulated as buffer zones.
- **Buffer** - An area of undeveloped vegetated land adjacent to a freshwater wetland that is to be retained in its natural undisturbed condition, or land that is to be created to resemble a naturally occurring vegetated area.
- **Buffer Zone** - An area of land within a jurisdictional area that is contiguous to a freshwater wetland and whose distance from the freshwater wetland is designated.

Current Regulated Area: All Freshwater Wetlands(As Defined Below) Certain Upland Areas All Floodplain Areas



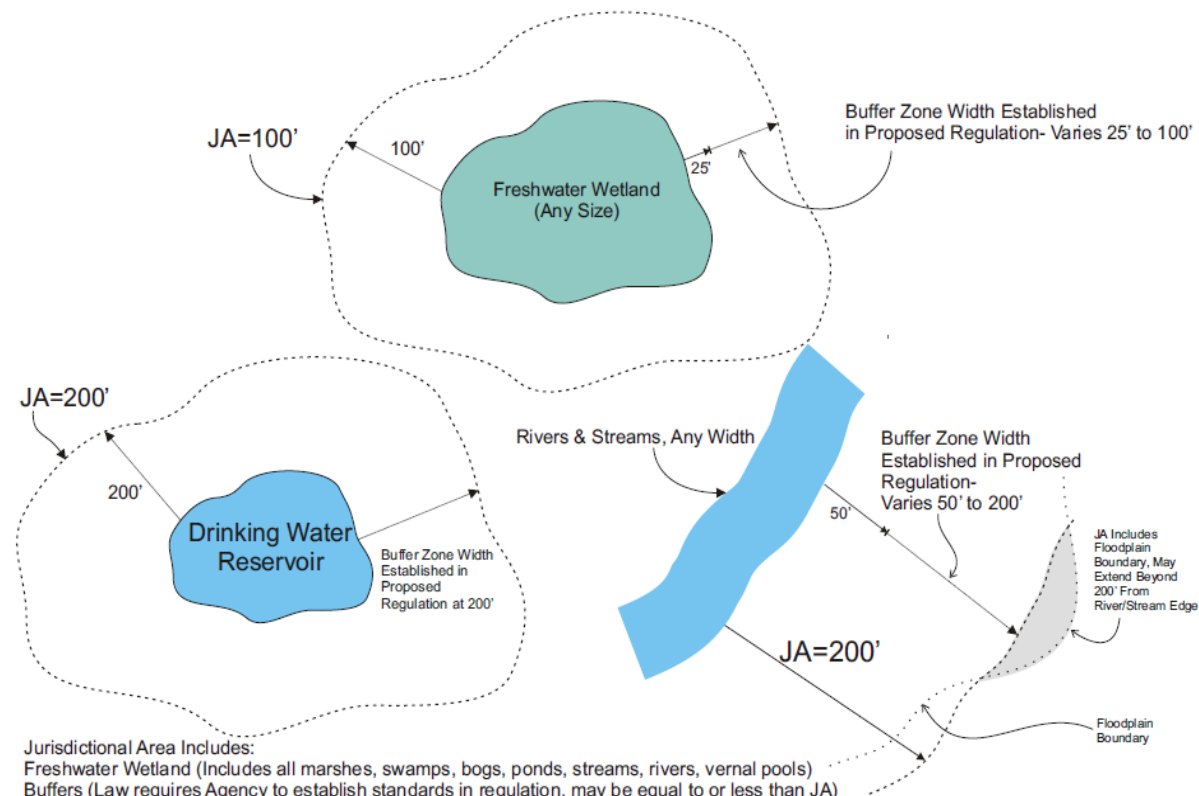
Law defines "Freshwater Wetlands" inclusively as marshes >1acre, swamps >3 acres, ponds >1/4 acre or bogs of any size and 50' landward from the resource edge; rivers <10' wide and 100' landward from the river edge; rivers >10' wide and 200' landward from the river edge; all other wetland resources regardless of size, Floodplains, and Areas Subject to Flooding or Storm Flowage.

Note: All resource areas above are targeted for protection

11/4/16

Change in Regulated Areas: Current vs. Expanded

New Regulated Area: Jurisdictional Area (JA) Designated in Law As Defined Below

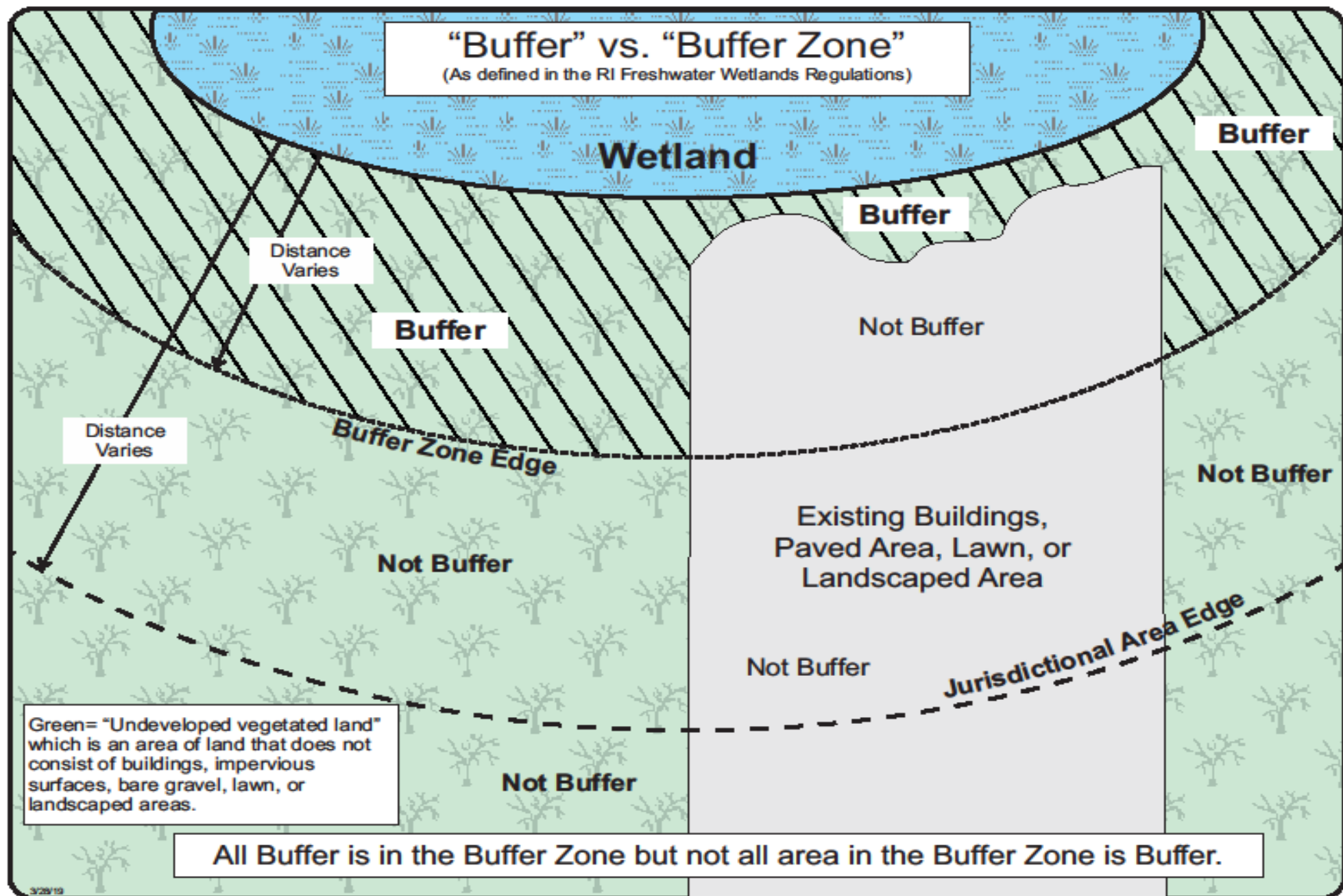


Jurisdictional Area Includes:

- Freshwater Wetland (Includes all marshes, swamps, bogs, ponds, streams, rivers, vernal pools)
- Buffers (Law requires Agency to establish standards in regulation, may be equal to or less than JA)
- Floodplains and Areas Subject to Flooding and Storm Flowage
- 200' Contiguous areas to rivers/streams and drinking water reservoirs
- 100' Contiguous areas from edge of all Freshwater Wetlands

Note: Freshwater Wetlands, Buffers, Floodplains are to be protected as directed by Law.

11/4/16



Applicability (Rule 2.5)

- Rules apply to all freshwater wetlands. Rule includes clarification of features that do not qualify as wetland resources; e.g. stormwater bioretention basin, concrete lined ponds, etc.
- Projects and activities are regulated in the jurisdictional area as expanded by law and in accordance with the rules.
- Provisions for qualified farmers conducting normal farming and ranching activities remain in place and are not affected by the rule changes.
- The jurisdictional boundary between DEM and CRMC depicting freshwater wetlands in the vicinity of the coast is not changing.

Standards and Variance Procedures

- Consolidated all standards and review criteria into one section of regulations and included variance requirements when standards cannot be met.
- Updated and new standards:

Rule 2.7.1 Freshwater Wetland and Buffer Protection Standards

(A) Wetland Protection Standard – avoid alteration to wetlands

(B) Buffer Protection Standard

- includes standards for creation of new buffer
- includes standard for infill lots

(C) Setback Standard -20' from the buffer width (primary structures)

Rule 2.7.3 Variances (Standards A-F only)

- includes current avoidance and minimization requirement

Establishing Buffer Standards-Rule 2.7

- **Tiered protection approach** — taking into consideration:
 - Watershed protection needs
 - Wetland resource characteristic
 - Existing land use
- Buffer zones range from 25' to 200' and are assigned by resource type including the use of lists with named waterbodies
- Buffer zones are established within the limit of the jurisdictional area and may be equivalent to the JA.
- Buffer protection strengthened in water supply watersheds and for other prioritized resources: larger lakes, certain vegetated wetlands, vernal pools and rivers providing high value for fish and wildlife habitat.
- All wetlands are designated with a buffer. (Smaller sized wetlands previously lacked this protection.)

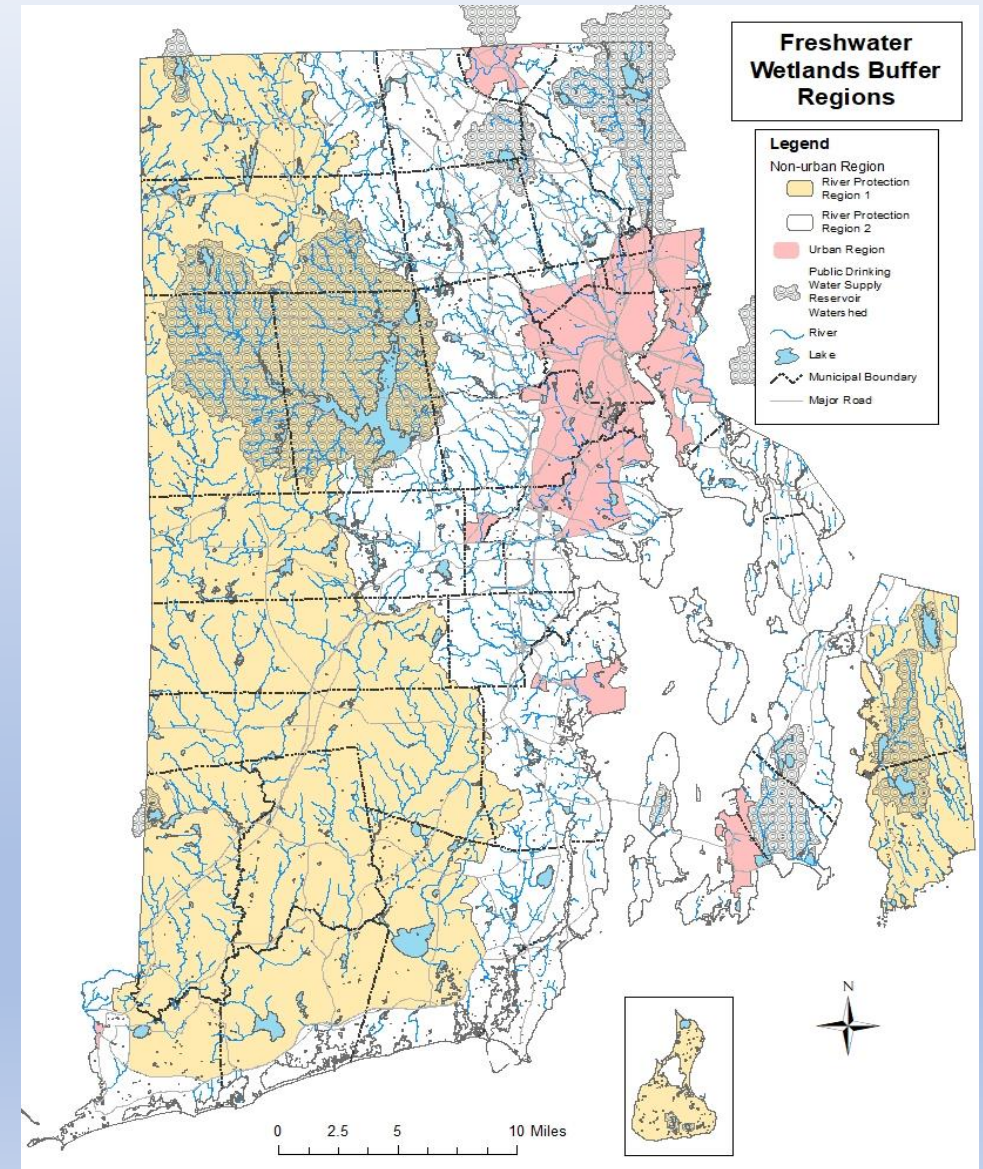
Buffer Zone Regions- Rule 2.23

- **Urban Region** - includes densely developed areas of state; portions of watersheds with high percent of impervious cover and areas already developed or altered.

Non-Urban Regions

- **River Protection Region 1-** includes watershed areas that are high priorities for conservation of fish and wildlife habitat.
- **River Protection Region 2-** includes areas of the state that exhibit a mix of land uses and watershed characteristics including urban, suburban and rural settings.
- **Water Supply Watershed Overlay**

Will be making mapping tool available online



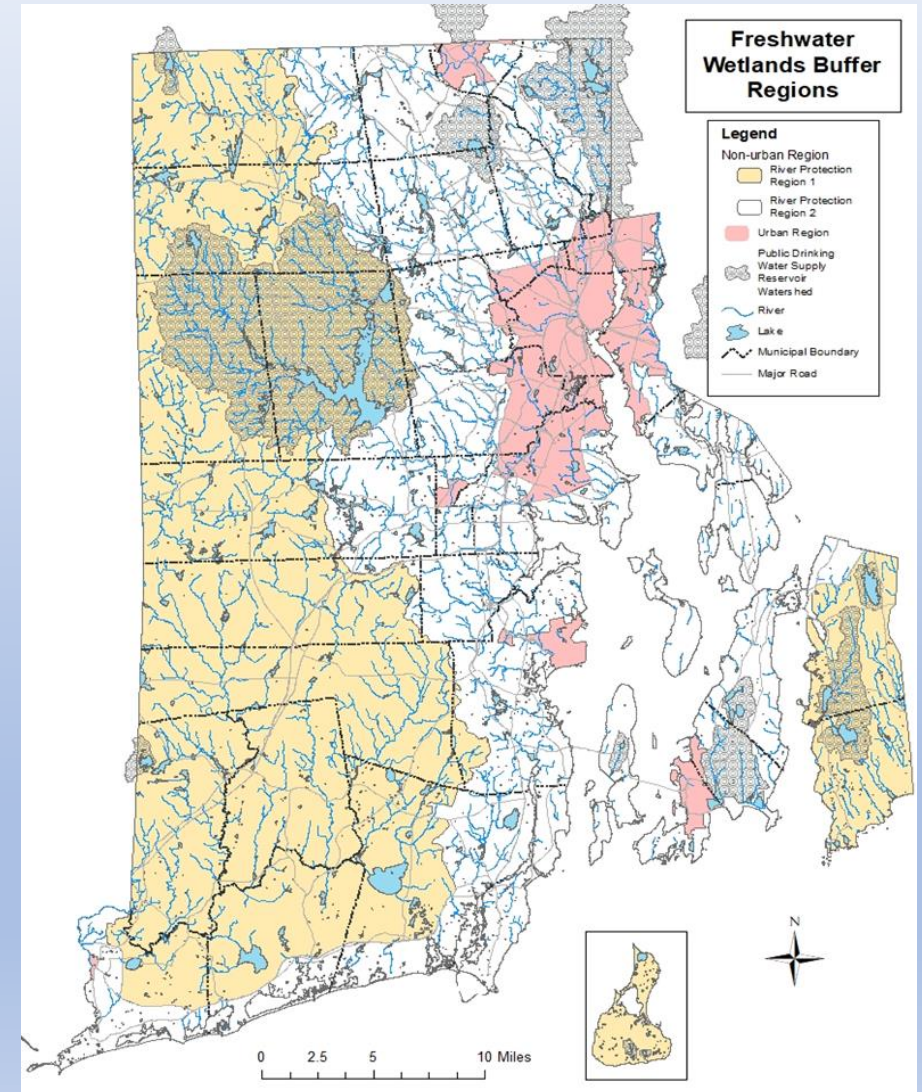
Statewide Buffer Zone Designations

Rule 2.23



Lakes and Ponds

- Water supply overlay areas have specific buffer zones standards – 200' for named reservoirs; 100' for ponds contiguous to a river flowing to a reservoir
- Non-urban Regions – Lakes ten acres and larger – buffer zone of 100 feet with listed exceptions for urbanized lakefronts
- Urban Region - Buffer Zones generally smaller due to alteration from existing land use

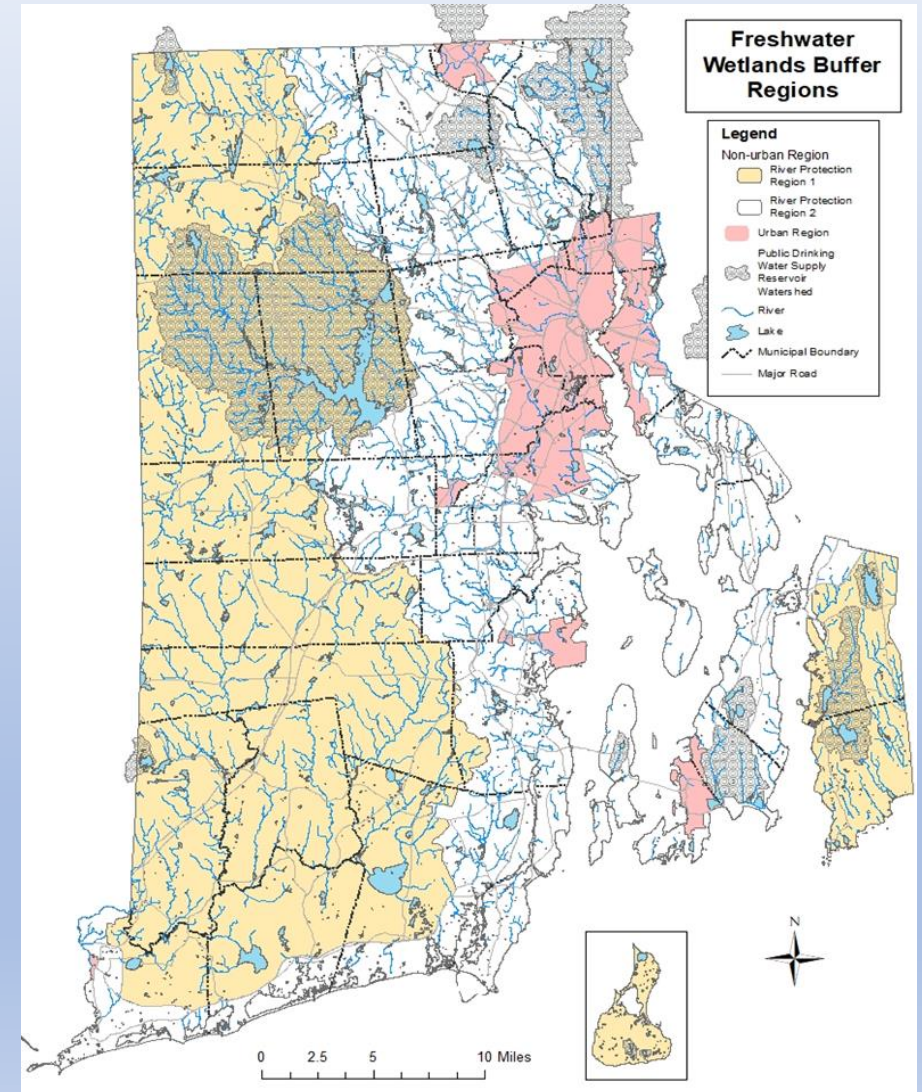


Statewide Buffer Zone Designations

Rule 2.23

Vegetated Wetlands & Vernal Pools

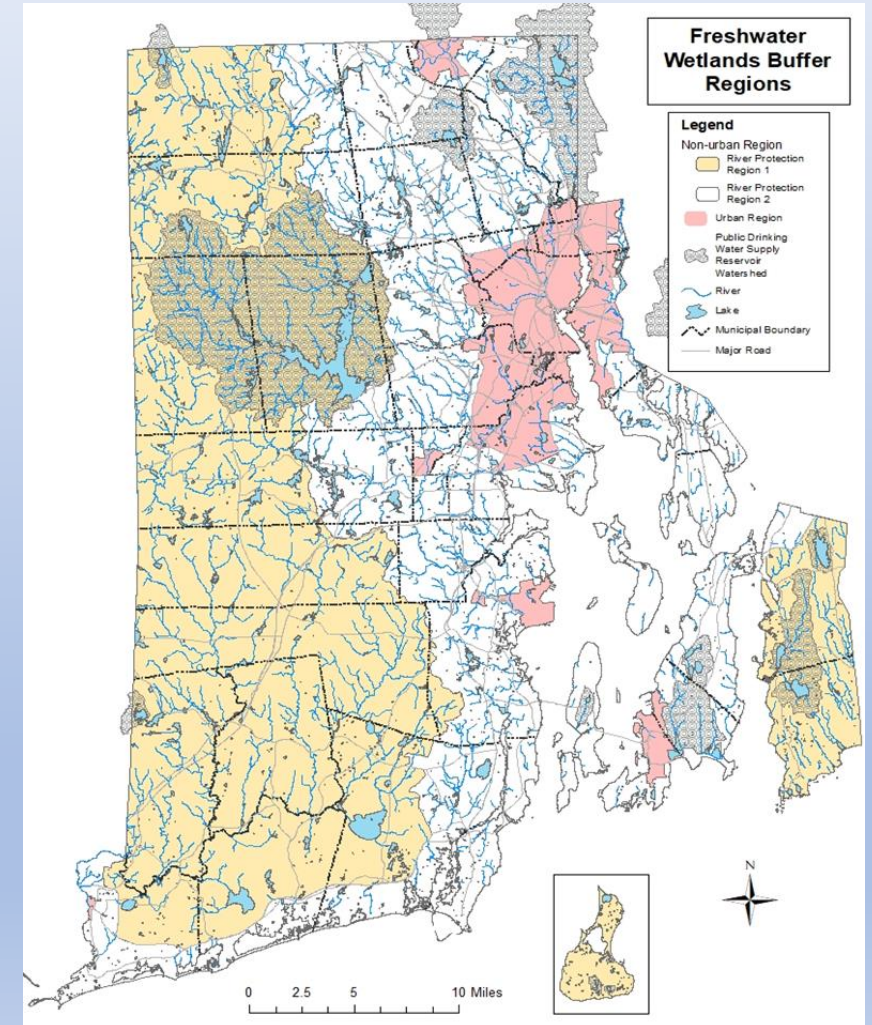
- Statewide (Urban and Non-urban Regions)
 - Bogs, marshes and certain other wetland resources assigned a maximum 100' buffer
 - Vernal Pools – Buffer zones of 50' to 100' dependent on % of undeveloped land within 100' of the pool
- Non-urban Regions – Vegetated wetland buffer zones are the same (range from 25' to 75')
- Urban Region - Buffer Zones generally smaller due to alteration from existing land use (range from 25' to 50')



River Protection Regions 1 & 2 (Non-Urban)

Rivers and Streams

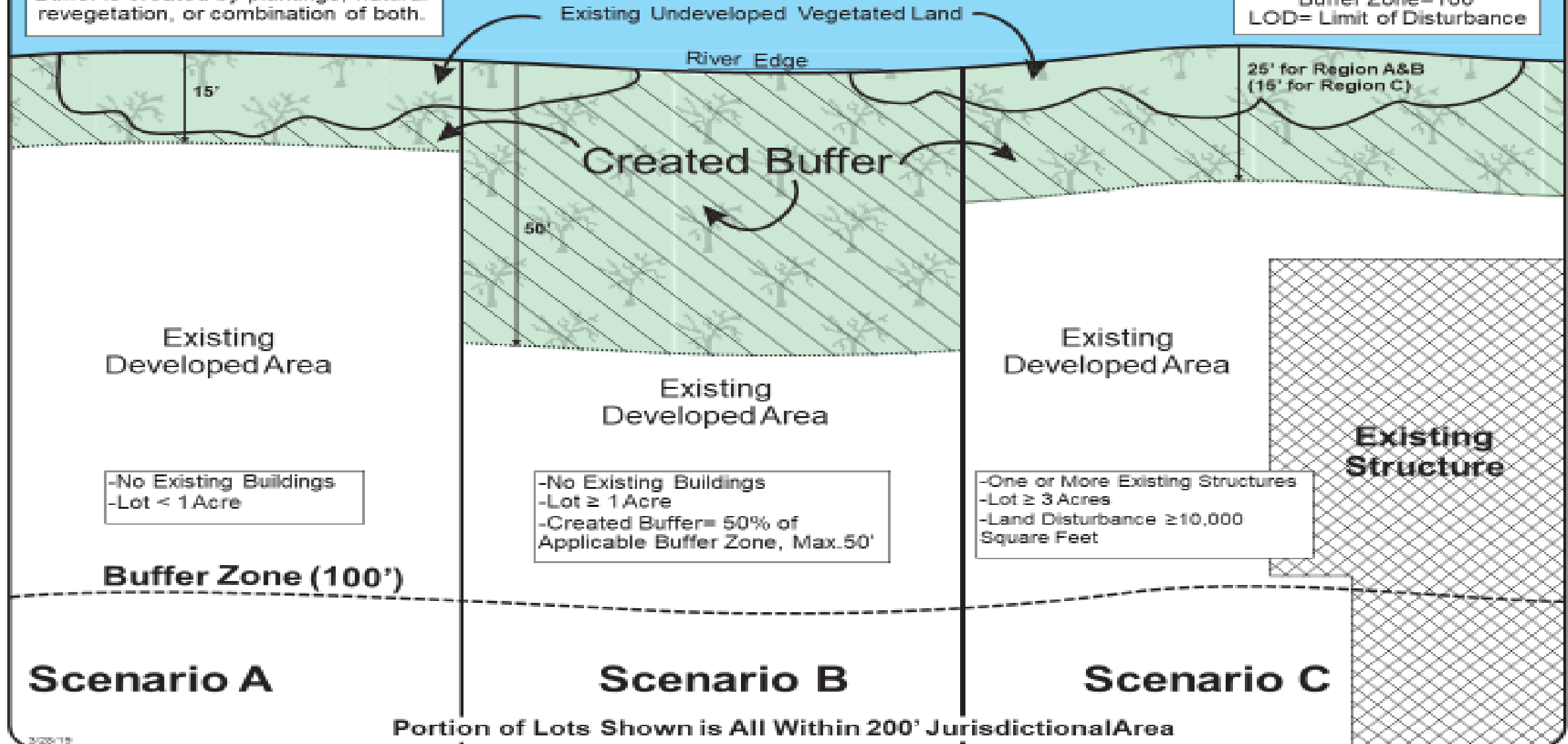
- Differences in river buffer zones reflect resource protection goals for rivers corridors with high wildlife habitat value and existing intact buffers.
- Rivers designated with buffer zones of 150' or 200' are **listed by name** and described.
- Rivers classified as cold-water fisheries assigned 150' buffer zones in River Protection Region 2.
- River Protection Regions are used to distinguish the buffer zones *for other rivers* (150'- Region 1 and 100' – Region 2)
- Streams (not mapped) –assigned 100' buffer zone



Examples of Creation of New Buffer Associated with Proposed Projects on Existing Developed Property

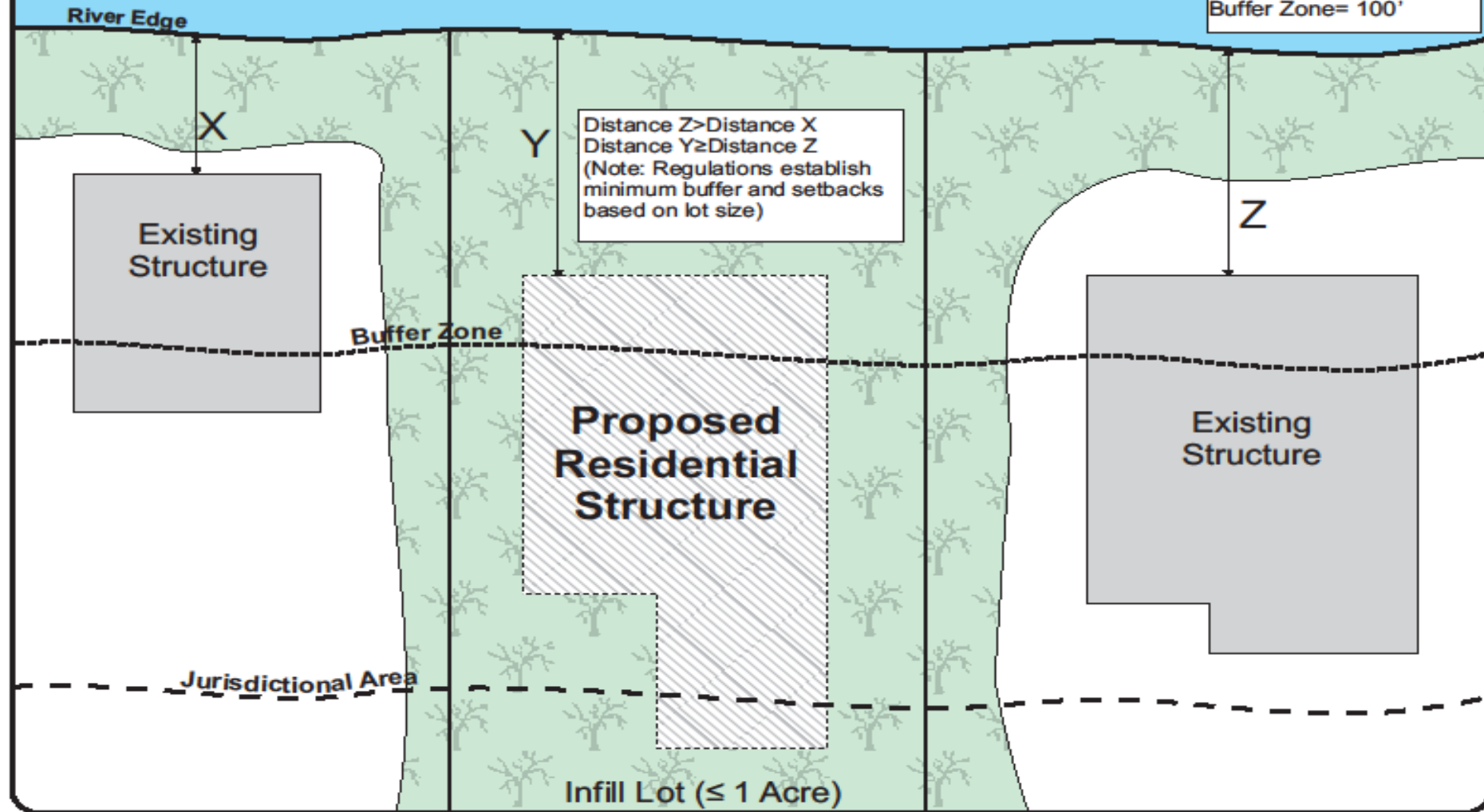
Buffer is created by plantings, natural revegetation, or combination of both.

Jurisdictional Area=200'
Buffer Zone=100'
LOD= Limit of Disturbance



Infill Lot Example (For Individual Residential Lots of Record)

Jurisdictional Area= 200'
Buffer Zone= 100'



Other Existing Standards

Intended to be the same as current regulations - moved to a consolidated standards section § 2.7.1

D. Rare or Endangered Species Standard

E. Flood Protection Standard

F. Surface and Groundwater Diversion Standard

G. Stormwater Management Standard

H. Erosion and Sediment Control Standard

I. Water Quality Standard

§ 2.7.2 Review Criteria – same as current regulations

Streamlining the State Permit Application Process

- Expanded Exempt Activities that have limited impacts. (Rule 2.6)
 - In several cases, text was clarified/modified in response to public input
- Developed simpler application categories.
 - General Permit
 - Freshwater Wetland Application (with no variance).
- Simplified Fee Schedule (Rule 2.8)
 - * Fees for municipal projects eliminated.



Expansion of Exempt Activities:

- Cutting vegetation in floodplain outside of wetlands and contiguous jurisdictional areas.
- Repaving parking lots less than 10,000 sq. ft.
- Non-residential expansions (600 sq. ft. limit) in already cleared areas.
- Utility line installations outside of wetlands and buffers.
- Expansion of gardens, pastures and fields and cutting of invasives in existing gardens, pastures and fields.
- Forest operation/management in response to emergency situations (requested by DOF).
- Restoration activities required as a result of an enforcement action.
- Limited cutting or clearing of invasives.
- Removal of accumulated sediments near inlet/outlet of culverts.
- Cutting for routine maintenance of landfill/site remediation caps.
- Installation of small signs.

New Permit Application Types

- **General Permit** – Designed to reduce submittal requirements, limit department review, and provide quick decision (Rule 2.10)
 - General Permit Categories: Single Family Homes, Stormwater retrofits, Limited redevelopment projects, New development outside of buffer zones
- **Freshwater Wetland Permit** – Simple application when all standards are met (Rule 2.11)
- **Freshwater Wetland Permit with Variance** – When all standards cannot be met and a significant alteration is not proposed – similar to today's Preliminary Determination (Rule 2.11)
- **Significant Alteration Permit** – Same as current process (Rule 2.12)

Municipal Coordination

- Notification of permit applications to designated municipal officials.
- Applicants for major land development projects required to obtain master plan approval prior to filing for a state freshwater wetlands permit.
- Municipality may petition the Agencies to increase the size of a buffer zone for a particular type of wetland resource (the requested buffer zone cannot exceed the jurisdictional area).
- Petition process does not apply to individual permit applications.

Phase Out of Municipal Ordinances

- ***After*** state promulgation of rules designating wetlands buffers and setbacks, municipalities are no longer authorized **to adopt or apply** zoning requirements for wetland buffers and onsite wastewater system setbacks to development proposals submitted after the effective date of the state rules.
- Local approvals issued and applications filed prior to state rule promulgation not affected.
- Municipalities must amend their ordinances (rescind requirements) within 12 months of the effective date of the state rules.

Rule Implementation

- The effective date of the rules will be 180 days from filing to provide a transition period for applicants actively planning projects.
- Applications submitted to DEM before the effective date will be governed by rules in effect at the time of filing.
- Applicants that have obtained master plan approval before the rule changes take effect but have not filed with the state agencies may follow rules in effect as of July 16, 2014 provided they file a complete application with the state agencies on or within 60 days from the effective day of the new rules.



Next Steps

Public Notice of Rule-making: November

Public Hearing (via Zoom): December 17, 2020 – 1:00 pm

Comments on proposed rules for the record should be submitted in accordance with instructions in the public notice. Close of comments: January 8, 2021

More information will be posted on RIDEM website at:

<http://www.dem.ri.gov/programs/water/permits/freshwater-wetlands.php>

Additional **questions** can be emailed to: DEM.WaterResources@dem.ri.gov